

GENERALIZED SYSTEM OF PREFERENCES

THE FOLLOWING DOCUMENT IS INTENDED TO PROVIDE GENERAL COMPLIANCE INFORMATION FOR IMPORTERS CLAIMING BENEFITS UNDER THE GENERALIZED SYSTEM OF PREFERENCES PROGRAM (GSP). THIS DOCUMENT IS INTENDED TO PROVIDE AN OVERVIEW OF THE GSP PROGRAM AND IT IS NOT INTENDED TO DEAL WITH ALL THE COMPLEXITIES OF THE PROGRAM. ITS PURPOSE IS TO INFORM IMPORTERS OF THE BASIC REQUIREMENTS OF THE GSP PROGRAM AND HOW TO BEGIN TO STRUCTURE A SYSTEM OF INTERNAL CONTROLS THAT ADDRESSES THE REGULATORY REQUIREMENTS FOR SUBSTANTIATING GSP CLAIMS. FOR MORE DETAILED INFORMATION, IT IS STRONGLY SUGGESTED THAT IMPORTERS REQUEST A COPY OF THE CUSTOMS INFORMED COMPLIANCE PUBLICATION (ICP), GENERALIZED SYSTEM OF PREFERENCES, FROM A REGULATORY AUDIT OFFICE LISTED ON THE CUSTOMS WEBSITE. IMPORTERS ARE ALSO ENCOURAGED TO SEEK RELATED INFORMATIONAL MATERIALS AVAILABLE FROM THE CUSTOMS WEBSITE AS WELL, AT <http://www.customs.gov>.

GSP – A PUBLIC USE DOCUMENT

One of the duty exempt programs available to the importing public is the Generalized System of Preferences – referred to by the acronym – GSP. It is a program that provides duty-free treatment for certain products originating from specifically identified countries known as Beneficiary Developing Countries (BDC).

To qualify for the duty free treatment a product must meet either of two criteria. The product must be wholly grown, produced, or manufactured in the BDC – or – at least 35% of the product's dutiable value, upon entering the United States, must be from costs directly attributable to the BDC.

Customs generally considers each BDC individually, and all GSP requirements must be met in the country or territory under consideration. However, there are certain associations of countries that are treated as if they were a single BDC. In the case of an association of countries, GSP requirements can be met in any of the countries within the association.

Generally, a written claim for GSP status is made on the entry document filed with Customs by placing the symbol "A" as a prefix to the tariff number of each article for which GSP treatment is claimed.

The documentation necessary to substantiate a GSP claim must be kept readily accessible should Customs request it. It is of critical importance that the importer recognizes the responsibility to provide the information. It is Customs policy that an inability to produce the required records will result in disallowance of GSP preference. The recordkeeping requirements for GSP claims are outlined in 19 CFR 10.171 through 10.178. Records may be requested from the importer of the GSP claimed products, from the foreign exporter, or both. The documentation substantiating a claim must be retained for a period of five years. The Customs Informed Compliance Publication (ICP), *Generalized System of Preferences*, gives numerous examples of the types of records that may be requested, but does not require that all the records given as examples be maintained.

This information is especially important to importers whose GSP importations are subject to a review through a Compliance Assessment or other audit review by Customs Regulatory Audit. During a compliance assessment, such review will usually occur when the volume of GSP importations by the audited importer exceeds \$10 million dollars for the fiscal year under review. However, GSP

transactions of a lesser volume may be reviewed during the compliance assessment as well if they are among those transactions under review for another issue. If the transactions exhibit compliance problems, Regulatory Audit may expand its review to include additional GSP transactions.

Customs policies require that Compliance Assessments be completed within a limited timetable. This policy will not allow the importer an open-ended timeframe in which to perfect its GSP claims, even if the required records reside with an overseas supplier.

GSP reviews other than those conducted as part of a Compliance Assessment may be initiated at the request of a Customs Port Director. The Port Director may request the submission of a GSP declaration, particularly if the origin of the imported article is from more than one BDC. The GSP declaration identifies the following information and must be submitted 60 days of the request:

- (i) Number and date of invoice,
- (ii) description of articles and quantity,
- (ii) if processing operations are performed on articles;
 - (a) description of processing operations and country of processing, and
 - (b) direct costs of processing operations,
- (iv) if materials are produced in a beneficiary developing country or members of the same association then;
 - (a) description of material, production process, and country of production, and
 - (b) cost or value of materials.

The information necessary for preparation of the declaration shall be retained in the files of the party responsible for its preparation and submission for a period of five years. Failure to submit the declaration in a timely fashion will result in a denial of duty-free treatment.

Regulatory Auditors have the responsibility to be reasonable and objective in their audit of an importer's GSP program. They are expected to exercise good judgement and flexibility and will attempt to identify alternative records maintained by the GSP claimant that may support the GSP claim. In this regard, emphasis is placed on the suitability of the alternate records and the totality of the record system in place, as it justifies the GSP transactions.

Audit reviews, regardless of their nature, are intended to foster compliance. Understanding GSP requirements and the records necessary to substantiate GSP claims, will greatly aid importers in implementing sufficient internal controls

to successfully complete a Customs audit. The most valuable action an importer can take is to assemble records before Customs initiates a review.

INTERNAL CONTROL QUESTIONS FOR THE IMPORTER

Questions that an importer should ask in the development of internal controls follow:

1. Are the GSP claimed products from an eligible country listed in General Note 4 of the Harmonized Tariff Schedules of the US?
2. What can I do to assure myself that the articles are in fact the growth, product or manufacture of the Beneficiary Developing Country, as asserted by my supplier?
3. What assurances do I have that the supplier's value information to support the GSP claim is complete and accurate?
4. Am I sure that the manufacturer can provide proof of eligibility and all the required declarations at time of purchase?
5. Do I have a knowledgeable staff, familiar with Customs requirements, handling my GSP importations?
6. If I am using a broker, am I comfortable my broker has the knowledge base to review the accuracy of GSP importations? Have I given him all the necessary information?
7. Do I have a system of recordkeeping that addresses the aspect of whether the importations qualify for GSP?
8. Do I know anything about my supplier that would assure me that its products meet the requirements for GSP?
9. Have I ever addressed the issue of verification of GSP claims with my foreign supplier? Will the supplier make their records available?

Asking the above questions will start an importer on the right course to determine whether GSP claims are justified prior to Customs requesting substantiation.

SUPPORT NEEDED FOR CLAIMS:

The importer should establish internal controls that identify and gather records to support GSP claims. There are two primary factors to be addressed, the origin of the product and its value.

The origin of articles that are wholly the growth, product, or manufacture of the BDC must be supported by documents obtainable by the importer. The supporting documents may include trip reports, site visits, quality assurance reports, and health, safety, and origin certificates prepared by government officials of the BDC. Additional evidence may be required to substantiate the manufacturing origin of articles that are the product or manufacture of the BDC. Evidence may include raw materials purchases, proof of factory labor, and support for manufacturing overhead. This is not to be considered an all-inclusive list of possible record sources.

In addition to BDC manufacturing costs, articles which are claimed GSP eligible under the *35 percent direct processing costs* provision may require evidence of the foreign manufacturing costs. Evidence may include product specifications, bill of materials, product cost sheets, payment records, overhead allocation schedules, raw material purchases, proof of factory labor, and support for manufacturing overhead. Production records must establish the value of the BDC materials used in the imported article on a lot by lot, batch by batch, shipment by shipment basis.

Materials imported into a BDC may be included in the value-content requirement only when they undergo a double substantial transformation. The value of the material may be counted only if the imported material is first substantially transformed into a new and different article of commerce that is then used in the BDC to produce the final article imported into the U.S.

The importer's internal control system should include tests to accumulate such information to substantiate that a double substantial transformation occurred. Evidence may include flowcharts and videos of the manufacturing process, product design specifications, bill of materials, product cost sheets, overhead allocation schedules, raw material purchases, proof of factory labor, payment records, and support for manufacturing overhead.

If a shipment from a BDC passes through the territory of any other country en route to the U.S., the merchandise must not enter the commerce of the transient country or it loses its eligibility for GSP preference. Documents supporting direct

shipment may include bills of lading, freight or shipping invoices, and air waybills that show the U.S. as the final destination.

Documentation and records supporting the GSP claims must be verifiable by linkage to inventory and accounting records, including summary records such as monthly production reports and accounts payable records. Again, this list is not considered absolute and Regulatory Auditors are charged with making a reasonable attempt to solicit and identify other alternative recordkeeping sources. However, the responsibility to substantiate the GSP claim ultimately resides with the claimant.

COMMON IMPORTER ERRORS CLAIMING GSP:

Since 1997, 66 percent of all companies having a compliance assessment that included a separate GSP sample (GSP claims exceeded the \$10 million dollar threshold) have been unable to substantiate their GSP claims. The most common errors include:

- Inability to produce records to support the 35% minimum value content provision.
- Foreign manufacturer commingled materials purchased from both BDC & non-BDC suppliers and importer is unable to identify when non-BDC components were used in an imported article.
- U.S. Goods Returned erroneously claimed as imported GSP articles.
- GSP articles erroneously classified. Properly classified, the articles are not eligible for GSP.
- Articles originated in a GSP ineligible country.
- Imported product did not undergo a double substantial transformation as claimed.
- Importer could not evidence direct shipment of the product from the BDC to the United States when the shipment entered an intermediate country en route to the United States.

REMINDER:

This document treats the GSP area in broad terms. Additional detailed information concerning specific examples of direct processing operation costs and suggested source records is available from Regulatory Audit by accessing the Customs Website. If an importer is seriously considering starting a GSP importing program, this additional information should be requested from Customs at <http://www.customs.gov>. Click on "Importing & Exporting" and then on "Regulatory Audit Program Information" for a list of the Regulatory Audit Trade Liaisons.

To reiterate, the most effective action that a GSP claimant can take is to build internal controls that identify and gather records to support GSP claims. The most critical mistake made by importers is to assume the necessary records exist and can be gathered if and when Customs requests them. Trusting in the assumption that all the required records can be assembled well after the importation, is inviting disallowance of the claims and possible penalties.